CONTRACTS—APPLICABILITY OF WORKMEN'S COMPENSATION ACT TO FOREIGN CONTRACTS.—Defendant company and plaintiff's decedent had entered into a contract for the latter's services to be performed partly in New York and partly in New Jersey, the contract being made in New York. Death occurred in New Jersey from injuries sustained while at work in that state. Plaintiff as administrator brings this proceeding under the Workmen's Compensation Act, and recovers a judgment; the defendant brings certiorari. At the time the contract was made there was no Workmen's Compensation Act in New York ;the defendant company defended on the ground that the relation was contractual, that the laws of the state of New York should govern, and that therefore no recovery should be allowed. *Held,* that the right of recovery rested not in the express New York contract but on the New Jersey Statute which as a matter of law was impliedly a part of the contract. *American Radiator Co.* v. *Rogge,* (N. J., 1914) 92 Atl. 85.

The court says first that there is no evidence to show that the parties intended to prohibit the laws of New Jersey from running, and could not if they desired. The analogy is pointed out to the liability under the Death Act, where it is held that the Act applies whether the contract is made in a jurisdiction where that Act is enforced or not: also to attempts by carriers to limit their liability in one jurisdiction where such limitations are invalid, by contracts made in jurisdictions where such limitations are good. *Nonotuck Silk Co.* v. *Adams Express Co.,* 256 Ill. 66. Finally the principle is invoked that courts will not enforce contracts which conflict with the law of the forum, even if they are valid where made. *Flagg* v. *Baldwin,* 38 N. J. Eq. 219. In *Pensabene* v. *F. & J. Auditore Co.,* 140 N. Y. Supp. 166, the facts and contract in which are identical with the instant case, it was held that a demurrer was good because the declaration did not allege that the contract was made in New Jersey; the court also says that when the contract is made in New York no implied contract regarding the laws of New Jersey can be read into it. The cases are different of course in that the New Jersey court would be more likely to read their own laws into a contract before them than would a New York court to put New Jersey laws into a New York contract; but as regards the implied contract, which the Supreme Court of New Jersey says is present, the New York court says very positively that, "Both parties must have been within the state, or they could not be held to have entered into a contract by implication under the provisions of the laws of that state." From these two decisions it still would seem to be an open question as to whether these Acts are impliedly a part of a foreign contract, although it is very probable that states having Workmen's Compensation Acts would follow the New Jersey decision when the question arises before them, but whether on the ground of implied contract or for other reasons is at least questionable.

CORPORATIONS—LICENSE TAX ON FOREIGN CORPORATIONS.—Petition by complainants to recover excise taxes paid for the privilege of transacting business within the state under the foreign corporation tax law of Massachusetts (St. 1909, C. 490 Part 3, § 56), which provides that, "Every foreign corpora-

tion shall in each year, at the time of filing its annual certificate of condition, pay to the treasurer and receiver-general, for the use of the commonwealth, an excise tax, to be assessed by the tax commissioner of one-fiftieth of one per cent of the par valuation of its capital stock as stated in the annual certificate of condition; but the amount of such excise tax shall not in any one year exceed the sum of $2,000. *Held,* that the petitioners could not recover, *Cheney Bros. Co.* v. *Commonwealth* (Mass. 1914), 106 N. E. 310.

The statute was upheld as being within the power of the state to impose a license fee upon foreign corporations for the privilege of doing business within the state even though the capital stock of the corporation is used as a basis for measuring the amount, *Atty. Gen.* v. *Electric Storage Battery Co.,* 188 Mass. 239; *Keystone Watch Case Co.* v. *Com.,* 212 Mass. 50, 90 N. E. 1063. A similar statute in Kansas was held invalid as imposing a burden upon interstate commerce in *Western Union Co.* v. *Kansas,* 216 U. S. 1 and *Pullman Co.* v. *Kansas,* 216 U. S. 56. But the Masaschusetts statute was upheld in *Baltic Mining Co.* v. *Com.,* 207 Mass. 381 and *S. S. White Dental Co.* v. *Com.,* 212 Mass. 35, as being a tax upon real and substantial local business and not a burden upon interstate commerce; and these holdings were upheld by the United States Supreme Court in 231 U. S. 68, 34 Sup. Ct. 15, 58 L. ed. 127. For comment upon these cases see 12 MICH L. REV. 210. In the principal case the court held that the relationship between interstate and intrastate business was of no consequence and the corporation, using property of real and substantial value in its intrastate business, was liable to the excise.

EASEMENTS—CREATION BY IMPLICATION.—Where the defendant, as owner of a tract of land, conveyed a portion of it to another, the deed making no provision relative to the use of a pump, operated by a gasoline engine, and a path leading thereto, both situated on the portion retained by the defendant, *held,* that the use was sufficiently necessary, apparent and continuous to constitute an easement acquired by the plaintiff. *Adams* v. *Gordon* (Ill. 1914) 106 N. E. 517.

This case appears to be in accord with recent Illinois decisions. It is not essential that the easement claimed be absolutely necessary to the use and enjoyment of the property, it is sufficient if it is highly beneficial. *Newell* v. *Sass,* 142 Ill. 104; *Powers* v. *Heffernan,* 233 Ill. 597. The easement in the principal case was sufficiently visible and apparent. *Foote* v. *Yarlott,* 238 Ill. 54; *Toothe* v. *Bryce,* 50 N. J. Eq. 589; *Larson* v. *Peterson,* 53 N. J. Eq. 88. And the easement of passage and use of pump is continuous in the proper sense of that term. *Foote* v. *Yarlott,* supra; the right of physical entry and interference by man upon the servient estate being in the nature of a "secondary easement," which is appurtenant to the primary or actual easement. *Toothe* v. *Bryce,* supra; GALE & W. EASEM., 323; WASHBURN, EASEM., 24 and 25. The principal case, however, would seem to extend the doctrine of continuous easements as laid down in the last named authorities, inasmuch as the use of path and pump in the principal case depends for its enjoyment upon an actual interference of man by entry at each time of its use, and this